HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No. 14958 OF 1996

-

-

Between:

Murapaka Ramulu

……Petitioner

And

Mandal Revenue Officer, Pusapatirega Mandal,
Vizianagaram District and another

……Respondents

:: ORDER ::

Counsel for the petitioner : None

Counsel for the Respondents : Government Pleader
for Assignment

Dated: 21-06-2006

In this petition, the petitioner has prayed for restraining the respondents from interfering with his possession and enjoyment over patta land bearing Survey Nos.26/1 and 28/1 of Kollayavalasa Village,

Pusaptirega Mandal, Vizianagaram District without following due process of law.

In the affidavit filed by him, petitioner Murapaka Ramulu has averred that the land in question was assigned to him on 04-06-1978 by the then Tahsildar, Bheemunipatnam and since then, he is in possession. He has further averred that on 20-07-1996, Village Administrative Officer came to his land and threatened to dispossess him on the ground of violation of the conditions of assignment. Still further, he has averred that he had explained to the Village Administrative Officer that there is no violation of the conditions of assignment but the officer concerned and the respondents are threatening to dispossess him. For the sake of reference, the averments contained in paragraphs 2 and 3 of the affidavit of the petitioner are reproduced below:

> "2. I was granted an assignment patta in D.R.No.433 dated 4-6-1978 by the then Tahsildar, Bheemunipatnam in respect of the agricultural lands in Survey No.26/1 and 28/1 admeasuring 44 cents and 2 acres and 22 cents aggregating to Ac.2.66 cents and since then I am in possession and enjoyment of the said agricultural land in which I have raised cashe and mango thope long back which is yielding usufruct. I was also issued a patta pass-book in respect of the said land. As there is cashew and mango thope which is yielding, there is no requirement of a regular cultivation of the said land at present.
>
> 3. The village administrative officer came to my land on 20-7-1996 and threatened me with dispossession on the ground that I have violated the conditions of assignment alleging that I am not cultivating the land where there is a standing mango and cashewnut thope. I have explained him that

when there is existing and yielding mango/cashewnut thope, there cannot be any regular cultivation of the land. But the first respondent is threatening me with dispossession from the said land and when I have requested the first respondent to issue any proceedings so as to enable me to explain the same, the respondents have not issued any notice and they have not initiated any action against me. But I am being threatened with dispossession and the village administrative officer has informed me that I will be dispossessed without issue of any notice and hence I have a reasonable apprehension of being dispossessed from the land. The first respondent is taking steps against me due to some political considerations to deprive me of the cashewnut and mango thope which was raised by me long back. The purported action of the respondents in attempting to dispossess me without following the procedure of law is arbitrary and also violative of Article 300-A of the Constitution of India. Under these circumstances, I am constrained to approach this Hon'ble Court.

In the counter affidavit filed by S. Swamibabu, the then Mandal Revenue Officer, Pusapatirega Mandal, Vizianagaram District, the factum of assignment of land to the petitioner has been admitted but it has been averred that on coming to know of the violation of condition of assignment by the petitioner, action was initiated against the petitioner and assignment made in his favour was cancelled vide order dated 8-5-1990. It has been further averred that after taking possession of the assigned land on 15-06-1990, the competent authority re-assigned the same vide proceedings Rc.No.109/89/A dated 14-08-1990. Paragraphs 2, 3 and 4 of the counter-affidavit read as under:

"2. The facts of the case are that as per the

instructions of the then Joint Collector, Vizianagaram and a petition put in by the Sarpanch, Gram panchayat, Pasupam wherein he stated that some of the D.Pattedars have sold away their assigned lands which were assigned to them to landed rich people in Kollayavalsa (v) of Poosapatirega Mandal. On the said petition, the then Mandal Revenue Officer, Poosapatirega visited the village on 3-3-1989 and conducted enquiry on the said petition and stated in his report that the Government Waste banjar land measuring Ac.249-42 cents was assigned as D.Pattas to 95 beneficiaries by the then Tahsildar, Beemunipatnam and the Tahsildar, Bhogapuram of which 38 D.Pattadars belonged to Kollayavalsa village and the remaining beneficiaries related to Tottadam, Rayadupeta, H/o. Pathivada and pasupam and palanki villages. Out of 95 assignees, only 52 assignees himself cultivating their D.Patta lands and the remaining 33 assignees, some of the D.Pattadar have violated the conditions of No.1 and 2 of D.Patta rules of which the present petitioner is one among them and some of the ryots have alienated their lands to some other persons who were landed rich people and therefore show cause notices were issued for violating the conditions No.1 and 2 of D.Patta rules and also in contravention of the provisions of Sub-sec.2 of sec.3 of A.P. Assigned lands (Prohibition of Transfer) Act, 1977 and also served on the enjoyers, but the parties failed to furnish their explanation within the stipulated time. Having called for, the assignees also failed to attend before the then Mandal Revenue Officer, Poosapatirega to give their statements in this respect and hence it is deemed that they have no explanation and therefore the then Mandal Revenue Officer, Poosapatirega issued orders in proceedings Rc.no.109/89/A dated 8-5-1990 for resumption of assigned lands to Government with immediate effect for violation of conditions no.1 and 2 of

D.Patta rules and Section 3 of A.P.Assigned lands (Prohibition of Transfer) Act, 1977. According to the orders of the then Mandal Revenue Officer, Poosapatirega, dated 8-5-1990, the then Mandal Revenue Inspector, has taken over the possession of the said assigned lands on 15-6-1990 duly observing the procedure. After resuming the assigned lands to Government, it was again re-assigned to 48 beneficiaries newly in the fasli year 1400 for an extent of Ac.103.07 cents and also issued D.Pattas to the new assignees vide proceedings Rc.no.109/89/A dated
14-8-1990 by the then Mandal Revenue Officer, Poosapatirega.

3. In reply to para no.2 of the Petitioner's affidavit it is submitted that Sri Murapaka Ramulu, Son of Ramaiah, was assigned D.Form patta covered by Sy.no.26/1(D); Ac.0-49 cents and Sy.no.28/1 measuring Ac.2-02 cents (as per old Fair Adangal) in Kollayavalsa village of Poosapatirega Mandal vide D.R.No.433, under D.Patta rules for cultivating the assigned lands, but the D.Pattedar i.e., Petitioner in the Writ petition Sri Murapaka Ramulu, did not cultivate the land and also the said lands covered by Sy.no.26/1 (D) correlated to 26/6 (New FCO) and 28/1 are not in their possession and enjoyment of the D.Pattadar (i.e.,) present Petitioner since sanction of D.Patta. The contention of the Petitioner that the land is in his possession and enjoyment is not true.

4. In reply to para 3 of the Petitioner's affidavit it is submitted that the original assignee i.e., the Petitioner viz., Sri Murapaka Ramulu, Son of Ramaiah, has not cultivated the land in question in Sy.no.26/1 (D) (as per S.L.R) and Sy;no 26/6 (New F.C.O. Records) measuring an extent of Ac.0-49 cents and in Sy.no.28/1 measuring Ac.2-22 cents since the assignment year, as such the Petitioner has violated the conditions nos. 1 and 2 under D.Patta rules i.e.., (1) The assigned land should be cultivated by the original assignee or the legal heirs

of the assignees only and not transferred the assigned lands to others by way of sale or Mortgage etc. (2) The assignee should cultivate the lands which was assigned to them, brought into cultivation within 3 years from the date of assignment made. Duly conducted the enquiry in Kollayavalsa village in which the land in question were situated, by the then Mandal Revenue Officer, Poosapatirega on 3-3-1989, Show cause notices were issued to 33 persons vide this Office Rc.no.109/89/A dated 20-5-1989 of the Mandal Revenue Officer, Poosapatirega to submit their explanation with giving stipulated time for explanation for violating the D.Form patta rules for conditions 1 and 2 and in contravention of provision of sub-sec. 2 of Sec.3 of A.P. Assigned (Prohibition of Transfer) Act, 1977 by them. Having called for, the assignees did not attend before the Mandal Revenue Officer, Poosapatirega to give their statement in this aspect. The said matter was reported to the Revenue Divisional Officer, Vizianagaram, vide Rc.no.109/89/A dated 2-8-1989 along with served copies of the individuals. As the said 33 persons including the petitioner have violated the conditions nos. 1 and 2 of D.Patta Rules, the said D.Pattas were resumed to Government with immediate effect, vide proceedings Rc.no.109/89/A dated 8-5-1990 of the then Mandal Revenue Officer, Poosapatirega in different Survey numbers in Kollayavalsa village of Poosapatirega Mandal for violation of D.Patta rules and in contravention of Sect.3 of A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 as some of the assignees have sold away their assigned lands to the landed rich people. Accordingly the then Mandal Revenue Inspector, Poosapatirega has taken possession on 15-6-1990 duly observed the procedure. After resuming the assigned lands, they were again re-assigned to 48 new assignees for an extent of Ac.103-07 cents vide proceedings Rc.no.109/89/A dated 20-8-1990 by the then

Mandal Revenue Officer, Poosapatirega. At the time of re-assignment, the Petitioner is not residing in the village of Kollayavalsa. The fact was also mentioned by the Petitioner in his statement which was given before the Mandal Revenue Officer, Poosapatirega. As such an extent of Ac.0-49 cents covered by Sy.no.26/6 and an extent of Ac.2-22 cents covered by Sy.no.28/1 were re-assigned to Smt.Busakala Sanyasamma, w/o. late Tata of Kollayavalsa village of Poosapatirega Mandal, who is landless poor, S.C. Beneficiary vide D.R.No.24/1400 dated 5-8-1990 by the Mandal Revenue Officer, Poosapatirega. It is further informed that the contents of the Petitioner stating that they being threatened by the Village Administrative Officer, Kollayavalsa for dispossession from the said lands by the Mandal Revenue Officer, Poosapatirega and also interference of the Political consideration in this regard are incorrect as the Petitioner is not in possession at all."

On 07-06-2006, the Court, after briefly taking cognizance of the rival pleadings, passed the following order:

"The petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India and prayed for issue of a direction to the respondents not to dispossess him from the land comprised in survey Nos.26/1 and 28/1 of Kollayavalasa village, Pusapatirega mandal, Vizianagaram district.

The thrust of the petitioner's claim is that he was assigned the land in question ten years ago and since then he is in continuous possession.

In the counter affidavit filed by Shri S.Swamibabu, the then Mandal Revenue Officer, it has been averred that the assignment made in favour of the petitioner had been cancelled on 08.05.1990 on account of violation of the conditions

of assignment; that possession of the assigned land had been taken over on 15.06.1990 and the land was re-assigned to a large number of beneficiaries on 14.08.1990.

Shri V.Venkata Ramana, learned counsel for the petitioner made an innocuous submission for protecting the possession of the petitioner by saying that the Court may direct the respondents not to take forcible possession of the assigned land. The learned Government Pleader controverted the submission of Shri Venkata Ramana by saying that the latter's client is not in possession since 1990.

With a view to decide the issue raised in the petition in a correct perspective, I direct the learned Government Pleader to ensure that the records relating to assignment made in favour of the petitioner, cancellation thereof and re-assignment of the land to other persons as also the document showing the taking over of possession on 15.06.1990 be produced before the Court.

Put up on 14.06.2006.

On the next date, the entire relevant record shall be kept ready for the perusal of the Court and, if necessary, to be shown to the learned counsel for the petitioner. The Mandal Revenue Officer of the area concerned should be instructed to depute a responsible officer with the records."

On the next date of hearing, the Court noted that the Mandal Revenue Officer has not complied with the direction given by the Court on 07-06-2006 and ordained that the record must be produced on the next date of hearing.

Today, learned Government Pleader for Assignment produced the original record, perusal of which reveals that the assignment made in favour of the petitioner had been cancelled by the Mandal Revenue Officer vide his order dated 08-05-1990, possession of the land in

question was taken from the petitioner on 15-06-1990 and, vide proceedings dated 14-8-1990, the land was re-assigned to others.

From what has been noted above, it is clear that the assignment made in favour of the petitioner had been cancelled by the competent authority more than six years prior to filing of the writ petition and after taking possession of the land, the competent authority re-assigned the same to others. The petitioner has neither challenged order dated 8-5-2990 passed by the Mandal Revenue Officer vide which the assignment made in his favour was cancelled nor he has questioned the legality of proceedings dated 14-8-1990 vide which the land in question was re-assigned to others. As a matter of fact, he has conveniently omitted to make a mention of the facts relating to orders dated 8-5-1990 and

14-8-1990 and the fact that possession of the land in question had been taken over on 15-6-1990. This omission on the petitioner's part leads to an inference that he did so with a view to mislead the Court in passing interim order in his favour. It is, therefore, reasonable to take the view that the petitioner is guilty of highly contumacious conduct and, as such, he is not entitled to relief under Article 226 of the Constitution of India.

In **Hari Narain v. Badri Das**[1], the Supreme Court upheld the objection raised on behalf of the respondents that the appellant was guilty of misstating the facts and revoked the leave by making the following observations:

> "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Art.136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the

> petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

In **Welcome Hotel and others v. State of Andhra Pradesh and others etc.,**[2] the Supreme Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

In **G. Narayanaswamy Reddy and others v. Governor of Karnataka and another**[3], the Supreme Court declined relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act on account of interim stay order passed in a writ petition. While dismissing the special leave petition, the Court observed:

> "Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected. It is well settled in law that the relief under Art.136 of the Constitution is discretionary and a petitioner who approaches this Court

for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions."

In **S.P.Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others**[4], the Supreme Court held that where a preliminary decree was obtained by playing fraud on the Court in-as-much as a vital document was withheld in order to gain advantage on the other side, such party deserves to be thrown out at any stage of the litigation.

In **Nand Lal and others v. State of Jammu and Kashmir and another**[5], a learned Judge of Jammu and Kashmir High Court held that if a party does not disclose all the facts correctly and candidly, it is not entitled to be heard on the merits of the case. Some of the observations made by the learned Single Judge are reproduced below:

"Where the petitioners under Art. 226 have not stated the relevant facts in the petition or in the affidavit in support of their petition, this is by itself sufficient to entail an outright dismissal of the writ petition without going into its merits. And even if the petitioners have a good case on merits, the Court will be entitled to decline to go into the merits and dismiss their petition, because the conduct of the petitioners has been such as to mislead the Court."

Reference also deserves to be made to some of the English decisions on this subject. In **Rex v. Kensington**[6], Cozens Hardy M.R. made the following observations on the conduct of a party in an ex-parte application in the following words:

"On an ex-parte application uberrima fides is required, and unless that can be established if there is anything like deception practiced on the Court, the Court ought not to go into the merits of the case, but simply say

we will not listen to your application because of what you have done."

Lord Scrutton L.J., said:

"It has for many years the rule of the Court and one which it is of the greatest importance to maintain, that when any applicant comes to the Court to obtain relief on an ex-parte statement, he should make a full and fair disclosure of all the material facts, facts not law …
… The applicant must state fully and fairly the facts and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement."

In **R v. Churchwardens of All Saints Wigan**[7], Lord Haterlay observed:

"Upon a prerogative writ there may arise many matters of discretion which may induce the Judges to withhold the grant of it – matters connected with delay or possibly with the conduct of the parties."

In **Rex v. Garland**[8], it was held:

"Where a process is ex debito justitiae, the Court would refuse to exercise its discretion in favour of the applicant where the application is found to be wanting in bona fides."

There is another reason for my disinclination to entertain the petitioner's prayer. He has neither placed on record copies of orders dated 08-05-1990 and 16-08-1990 nor he has impleaded the new assignees as parties to the writ petition. This Court cannot directly or indirectly nullify an order which has not been placed on record of the writ petition – **Surinder Singh v. Central Government**[9]. In any case, an order affecting the rights of the persons to whom the land was assigned vide proceedings dated

14-8-1990 cannot be passed because none of them is a party to the writ petition.

For the reasons stated above, the writ petition is dismissed. I would have saddled the writ petitioner with exemplary costs but refrain from doing so because today he is not represented by anybody.

G.S. SINGHVI, CJ

21-06-2006

svs

---

[1] AIR 1963 SC 1558
[2] AIR 1983 SC 1015
[3] AIR 1991 SC 1726
[4] JT 1993 (6) SC 331
[5] AIR 1960 J & K 19
[6] 1917 (1) KB 486
[7] (1876) 1 A.C. 611,
[8] (1870) 39 L.R. Q.B. 269
[9] AIR 1986 SC 2166